



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 30, 1998

Ms. D'Ann Johnson
Assistant General Counsel
Texas Department of Banking
2601 North Lamar Boulevard
Austin, Texas 78705-4294

OR98-1097

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115251.

The Texas Department of Banking (the "department") received an open records request for a "[l]ist of questions that were asked of all applicants for [two job openings] that were interviewed and the answers provided by the applicants." You have submitted to this office as responsive to the request the interview questions posed to applicants for the position of "administrative assistant" and contend that questions 2, 3, 5, 7, 8, 9, 10, 13, and 14, and the applicants' responses thereto, are excepted from required public disclosure pursuant to section 552.122(b) of the Government Code.

Section 552.122(b) of the Government Code excepts from required public disclosure "test item[s] developed by a . . . governmental body." Because the department is clearly a "governmental body," section 552.122(b) is applicable to test items developed by the department, but only where the test items constitute a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated"; the exception would not apply to evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 (1994) at 6. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.*


After reviewing the requested documents, we conclude that only some of the test items you seek to withhold are the type of information that section 552.122 was intended to protect. Questions 5, 7, 8, and 13 clearly test the applicant's technical knowledge of certain aspects of administrative work and consequently come under the protection of section 552.122(b). Furthermore, we conclude that the release of the responses to these four

questions would reveal the substance of those "test items." Therefore, the department may withhold the test questions and the corresponding answers provided by the applicants for questions 5, 7, 8, and 13 under section 552.122(b).

The other questions you seek to withhold are more "open-ended" in nature and require subjective responses and subjective evaluations of those responses. As such, these questions address the applicant's overall suitability for employment rather than his or her knowledge or ability to perform assigned work. The department therefore may withhold pursuant to section 552.122(b) only those items numbered 5, 7, 8, and 13; the remaining interview questions must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet L. Monteros
Assistant Attorney General
Open Records Division

JIM/RWP/gle

Ref.: ID# 115251

Enclosures: Submitted documents

cc: Ms. Linda B. Hill
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(w/o enclosures)